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No. 71-1259

In the Supreme Court of the United States

OCTOBER TERM, 1971

CENTRAL MACHINE & TOOL COMPANY, INC.,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

PETER G. NASH,
General Counsel,
National Labor Relations Board,
Washington, D.C. 20570.

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1. In the initial unfair labor practice proceedings, the Board, *inter alia*, ordered petitioner to make whole five employees for their wage losses resulting from petitioner's discriminatory discharges, in violation of Section 8(a)(3) and (1) of the Act. 171 NLRB 1080 and 172 NLRB No. 175. The court of appeals enforced the Board's orders. 424 F. 2d 542 (C.A. 10), and 429 F. 2d 1127 (C.A. 10), certiorari denied, 401 U.S. 909.

On May 7, 1971, the Board's Regional Director issued a backpay specification setting forth the

amounts of back pay which appeared to be due those employees, and ordered a hearing for June 28, 1971.[1] The specification notified petitioner that, under Section 102.54 of the Board's rules, 29 CFR 102.54, petitioner had 15 days within which to file with the Regional Director its answer to the specification, and that, if it failed to do so, the Board could treat the specification as true without taking evidence.[2] Petitioner did not file a timely answer and did not seek a timely extension of time as permitted under Section 102.55 of the Board's Rules. On May 28, 1971, the Board's General Counsel filed with the Board a Motion to Find Backpay Specification True, which petitioner opposed.

The Board, in its Supplemental Order,[3] adopted the backpay specification in view of petitioner's failure to file an answer as required by Section 102.54 of the Board's Rules. Accordingly, the Board cancelled the scheduled hearing and ordered petitioner to pay each discriminatee the net amounts stated in the

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[1] The backpay procedures are set forth in the Board's Rules and Regulations, Sections 102.52-102.59 (29 CFR 102.52-102.59).

[2] Section 102.54(c) of the Board's Rules provides: "If the respondent fails to file any answer to the specification within the time prescribed by this section [15 days from the service of the specification], the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate."

[3] The Board's Supplemental Order is set forth in the appendix, *infra*, pp. 4-6.

specification. The court of appeals summarily enforced the Board's backpay order (Pet. App. i-ii).

2. There is no substance to petitioner's contention that it was denied due process by the Board's failure to hold a hearing in the backpay proceeding. By failing to file an answer to the Board's backpay specification within the time required by the Board's Rules, petitioner in effect consented to the amounts of backpay set forth in the Board's specification and waived its right to contest those amounts at a hearing.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

PETER G. NASH,
General Counsel,
National Labor Relations Board.

MAY 1972.

APPENDIX

Enid, Okla.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Cases 16-CA-2891
16-CA-2959
16-CA-3053

CENTRAL MACHINE AND TOOL WORKS

and

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

SUPPLEMENTAL ORDER

On June 6, 1968, the National Labor Relations Board issued a Decision and Order[1] in Cases 16-CA-2891 and 16-CA-2959 and, on August 19, 1968, issued a Decision and Order[2] in Case 16-CA-3053, ordering, *inter alia*, the Respondent to make whole Clinton M. Alexander, Robert A. Lucas, Leslie G. Ragoss, Kenneth G. Warren and Arthur L. Willett for their losses resulting from the Respondent's unfair labor practices in violation of Section 8(a)(3) of the National Labor Relations Act, as amended. The United States Court of Appeals for the Tenth Circuit, on May 19 and August 7, 1970, respectively, entered judgments enforcing in full the backpay provisions of the Board's Orders. A controversy having arisen over the amount due under the terms of the

[1] 171 NLRB No. 139.

[2] 172 NLRB No. 175.

Board's Order as enforced by the Court, the Regional Director for Region 16, on May 7, 1971, issued and served on the parties an Order consolidating the cases and a Backpay Specification and Notice of Hearing, alleging the amounts of backpay due said employees, and notifying the Respondent that, pursuant to Section 102.54 of the Board's Rules and Regulations, the Respondent should, within 15 days from the date of the specification, file an answer to the specification with the Regional Director.

The Respondent having failed to file an answer as required, the General Counsel, on May 28, 1971, filed with the Board a Motion to Find Backpay Specification True, requesting that the Board find the allegations of the Backpay Specification to be true without taking evidence in support thereof; enter an order requiring Respondent to make whole the employees in question in the amounts set forth in the specification, plus interest thereon until the date of payment; and postpone indefinitely the hearing presently scheduled herein for June 28, 1971, pending disposition of the motion. The Respondent requested an extension of time to and including June 10, 1971, to file an answer to the backpay specification, and filed a response in opposition to the General Counsel's motion. The General Counsel filed a reply to the Respondent's response and the Respondent filed a response to the General Counsel's reply.

The Board having duly considered the matter,

IT IS HEREBY ORDERED that the General Counsel's motion be, and it hereby is, granted, and that the hearing scheduled herein for June 28, 1971, be, and it hereby is, cancelled.[3]

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[3] The Respondent's request for extension of time to file an answer to the backpay Specification is hereby denied.

NOW, THEREFORE, pursuant to Section 102.54 (c) of the Board's Rules and Regulations, Series 8, as amended, the Board accepts the allegations of the Backpay Specification as true, finds the facts as set forth therein, and concludes that the net backpay due each discriminatee is as stated in the computations in the specification. Accordingly,

IT IS FURTHER ORDERED that the Respondent, Central Machine and Tool Works, its officers, agents, successors, and assigns, shall pay to the employees named below the amounts set opposite their names, plus interest accrued at the rate of 6 percent per annum to the date of payment,[4] minus the tax withholdings required by Federal and State laws:

Clinton M. Alexander	$14,875.68
Robert A. Lucas	11,473.44
Leslie G. Ragoss	610.89
Kenneth G. Warren	5,695.69
Arthur L. Willett	4,899.92

Dated, Washington, D. C., June 10, 1971.

By direction of the Board:

/s/ George A. Leet
GEORGE A. LEET
Associate Executive
Secretary

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[4] Interest on the backpay shall be computed in the manner set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 116.

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